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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 506

SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR,

Petitioner,

vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITIONER'S REPLY TO BRIEF OF RESPONDENT.

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PETITIONER'S REPLY TO BRIEF OF RESPONDENT.

May It Please the Court:

Respondent's desperate effort to prevent the granting of the writ, by the inclusion of matters extraneous to the present record, and comprising *only a part* of the proceedings in another suit, compels the filing of this brief. We shall endeavor to confine our comments herein to its journeys beyond the record, and the most glaring of its inadvertent misstatements.

Answering A.

In discussing the interrelations of a labor union and its members, the opinion respondent seeks to uphold solemnly says of the present case:

> "We, however, are not concerned with that question here, *for no conflicting rights or claims of members*

and union, are asserted here. The members of the union are not the plaintiff, the union itself is plaintiff, suing, as it states in its petition, as the representative of all of its members, and no claim is made on any hand, nor indeed, none could be, that the union is asking anything inconsistent with the rights of any of its members" (R. 96; 119 F. (2d), 514, 515; italics supplied).

The accusations of internecine strife, the putting over of "a fast one" by a "clique", and like outpourings found on pp. 8-9 of respondent's brief have no relation to reality. It is exquisitely ludicrous to observe the respondent shedding crocodile tears over the fate of *any* of *its* employees.

If the plaintiffs of Cause No. 10,523 in the State court, are to be believed, some were members of a "local craft", and others belonged to no craft or union (see Paragraph XV, Respondent's brief, p. 28). Let us assume they were all members of the petitioner, and their complaints valid; yet, the petitioner would have been authorized to represent the entire craft in the present proceeding. That some members of the craft will suffer by the enforcement of seniority rights is inevitable; but this does not rob the craft representatives of authority to seek the Board's aid in enforcing a labor contract, nor deprive the Board of power to act in the premises. The dispute so created is one between the employer and the craft, cognizable by the Board, whether the craft be considered the principal to the contract, or the agent for the employees, in making it (R. 95-96; 119 F. (2d), 514-515, and cases cited).

The respondent has never, since October 20th, 1937, challenged the right of Petitioner to represent the crafts here involved, and in fact, entered a collective bargaining agreement with it, as such, on that date (see R. 15, Exh. B, ordered up in original R. 72). Had there been the internecine strife within the craft, which respondent invents for

the first time in its brief, ample machinery existed under the Railway Labor Act, as amended June 21, 1934, to have caused an election and certification of the name of the proper representative of the craft by the mediation board (*Virginia Ry. Co.* v. *Sys. Fed. No. 40*, 300 U. S. 515, 546; 81 L. Ed., 789, 799).

Respondent did not seek a decision on this issue, for the simple reason that the amendment indicated ended the day of the "company union," and like stooges. As wisely said in *Estes* v. *Union Term. Co.*, 89 F. (2d), 768, 774:

> "Under the theory and purpose of the statute neither the employees favored, nor those disfavored, by the carrier, have individual legal rights which they can press against the carrier as rights personal to themselves, apart from the collective agreement under which they work. Their rights are those of the class covered by the agreement, arising to the class and to them as members of the class, by virtue of the agreement, and by virtue of it alone."

Careful inspection of the proceedings in Cause No. 10,523 in the State court, will disclose the old and familiar effort to govern the relations of employer and employee by injunction (respondent's brief, 36-37). While the fine Italian hand of the respondent may not necessarily be discerned in them, of a certainty they relieved it of making any real effort to adjust the present labor dispute.

We regret that respondent has seen fit to present matters from without the record in this Court. Had a fair presentation of the same been made, we would have ignored its conduct. In attacking the jurisdiction of the Board, however, respondent suggests that this being a dispute between employees, only the courts can settle it, "where all parties are before the court" (its brief, 9). It conveniently failed to inform this Court that the end result of the proceedings in State court Cause No. 10,523 was a judg-

ment, confirming an agreement in open court, for all employees there complaining to dismiss such cause and intervene in the present one, so soon as it should be placed at issue. Hence, all parties will be before the Court when the present case is placed at issue. For the purpose of showing this alone, we follow the respondent out of the record, and attach as our Appendix A, the motion, judgment and restraining order which comprises the last proceedings in said State court cause.

Answering B.

Respondent can cite no case for its proposition (p. 12, its brief) that a cause of action for breach of contract, which has accrued during its term, expires at the end thereof. No court of any civilized land has heretofore denied the recovery of damages for breach of a contract, which occurred during the term of the agreement, simply because suit was instituted *after* a questionable cancellation thereof by only *one* of the contracting parties. Patently, neither the posted rules of February 9, 1931, nor the pact of October 20, 1937, were retroactive, or purported to affect previously existing employer-employee relations or rights to damages which had theretofore accrued (R. 15). As well remarked by a Texas court, in speaking of the effect of a subsequent written contract on an earlier oral one, made between the same parties:

> "If the written contract changed the contract originally made between the parties, such change would not affect plaintiff's right to recover damages sustained by him by reason of defendant's breach of the original contract which accrued prior to the execution of the written contract, unless such contract *by express terms or necessary implication* showed that the parties intended it to limit plaintiff's right to recover damages already sustained for breach of the original as well as damages that might be thereafter sustained

by defendant's breach of the written contract. Railway Co. *v.* Harris, 110 S. W. 145; Cattle Co. *v.* Balfour, 146 S. W. 674; Simpkens on Contracts (1010 Ed.), par. 3." (Italics supplied. *Granger* v. *Kishi*, 153 S. W. 1161, 1163. Also see *13 C. J.*, 660 and 598.)

Examination of the fourth from last paragraph of the opinion, heavily relied upon by respondent (its brief, p. 12), shows that it does not challenge the employees' right of action for breach of either the 1929 contract or the 1931 rules (R. 97, 119 F. (2d) 515). True, it says the "right to work" under the contract ended with its term; whereupon, the employees held rights to work under subsequent rules. It does not say that the right to damages for breach of the contract or rule ended with the term of each; nor could it, without running counter to the decision of this Court in *Spalding* v. *Mason*, 161 U. S. 375 at 396, which pointedly remarks that:

> " 'It is a dictate of natural justice, and the law of every civilized country, that a man is bound in equity, not only to perform his engagements, but also to repair all the damages that accrue naturally from their breach * * *.' "

The sole support of the opinion in this respect is the bland assertion that no claim has been or is being made for damages for breach of the contract. That this is wholly untrue is easily discernible from reading the complaint (particularly R. 18 and para. b, R. 27). By actual count, some 58 of the some 81 employees, or, roughly, 71% of those complaining, were alleged to have been cut off in violation of the 1929 contract and prior to February 9th, 1931 (R. 7-10). Not only does the complaint contain specific counts charging violation of the 1929 contract, occasioning loss of time and money to the employees wronged (R. 18), but it prays for an accounting of all sums due to

each of the employees named therein, and for general relief (R. 27).

Answering C.

Respondent's contention that there was no breach of the 1929 contract alleged, through failure to seek re-employment under the "ten day rule", ignores the direct charge that the men were wrongfully laid off, or taken out of service in violation of the contract in the first instance (See Para. IV-A, R. 10). Further, it ignores the specific allegations that the living employees: "* * * are now, and have been since their respective furloughs able and willing to perform for the defendant services of their various crafts as the same might be required of them by the defendant" (Para. XII, R. 24); that "* * * various of the employees named in Paragraph IV hereof, after their respective furloughs, and after they had been replaced by new employees from time to time, requested the defendant to reinstate them to service according to the seniority rights under the Agreement of August 1, 1929, confirmed or carried forward in the purported rules of February 9, 1931, which requests were uniformly refused" (Para. IX, R. 20).

Alternative counts in the complaint charged, that whether the August 1st, 1929 contract, or February 9, 1931 rules were effective at the "time the workers described herein were held out of employment", that "in either or both of said events, plaintiff has a contractual right of action against defendant as alleged herein, by reason of the loss of time and money wrongfully occasioned plaintiffs by the breach of said contractual relations arising out of the infraction of rules 8, 9 and 12, or what is commonly called their seniority rights" (R. 18).

We confess to the "redundancies, prolixities and inconsistencies" found in our complaint by the Circuit Court and respondent. Yet, the poor literary style of their law-

yers should not serve to deny to petitioners their day in court on a meritorious claim. Particularly so, where under existing rules, to quote *Moore's Federal Practice,* Vol. 1, page 440, "a generalized summary of the case that affords fair notice is all that can be expected." (See also *4 Fed. Rules Serv.,* 891; *Sec. & Exch. Comm.* v. *Timetrust Inc.,* 28 Fed. Supp. 34, 41; *Van Dyke* v. *Broadhurst,* 28 Fed. Supp. 737; *MacLeod* v. *Cohen-Erichs Corp.,* 28 Fed. Supp. 103; *Young* v. *Aetna Life Ins. Co.,* 32 Fed. Supp. 389). At worst, petitioner should have been ordered to replead, and not been thrown bodily out of court, because of prolixities (*Catanzaritti* v. *Bianco,* 25 Fed. Supp. 457).

Again, Respondent's efforts to limit some of petitioner's allegations in one count, by contrary charges in the same or another count (its brief, pp. 6 and 4, 13), are met full in the face by the procedural rule which in part reads:

> "A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both." (Rule 8 (e), 28 U. S. C. A., foll. Sec. 723C p. 402, and see *Kraus* v. *Gen. Mot. Corp.,* 27 Fed. Supp., 537, 540).

Answering D.

The allegation that petitioner endeavored to settle the "dispute as to the interpretation of the agreement of August 1, 1939, by conference duly held with the proper officers of said defendant in due order and in the manner provided by the Railway Labor Act as amended" (R. 22), was sufficiently broad as a basis for proving all contentions

pertaining to such dispute, including the effect of the 1931 rules on the rights of the employees, and on the 1929 agreement. Considering the award of the Board, which was attached to the petition, it will be seen that the Respondent anticipated that the claim was based on the 1931 rules, and brought forward its contentions thereunder (See Sec. 10, Carrier's Statement of Facts, R. 34).

Remembering that the Board's jurisdiction is invoked through the simple filing of a petition, with facts and supporting data (45 U. S. C. A., Sec. 153, first (i)), it appears to be highly inconsequential, whether Petitioner or Respondent furnished the data as to the 1931 rules, and their effect on the particular dispute. After its request for the Board to consider the 1931 rules in determining the entire dispute, Respondent's contention it had no jurisdiction to act thereon, comes in ill grace.

Conclusion.

We make no specific answer to subdivisions E through H of Respondent's brief, for the reason that the foregoing discussion under subdivision A through D fully answers all of the conditions later brought forward. We respectfully submit that petitioner is entitled to the relief sought by the petition for Writ of Certiorari and supporting brief now on file.

Respectfully submitted,

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